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IN THE

Supreme Court of the United States

JANUARY TERM, 1973

No. 72-1132

ALMA C. JACOBS, ADMINISTRATRIX
OF THE ESTATE OF
REGINALD GENE JACOBS, DECEASED
Petitioner

vs

WINSTON FRANKLIN CLARKE-WHITE
Respondent

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

This case arises out of an automobile accident which occurred at an intersection of two public streets in the City of Columbus, Ohio. The accident resulted in the death of the Petitioner's decedent. The basic dispute between the parties concerned the color of the traffic light at the intersection immediately prior to the collision. An ancillary question was presented as to whether or not the alleged illegitimate child of the decedent could participate as a beneficiary of the action. A jury resolved the issue of liability in favor of the Respondent. Upon appeal, the reviewing court affirmed the judgment of the trial court in all respects. The Supreme Court of Ohio overruled Petitioner's Motion to Certify the Record and dismissed her appeal

for want of a substantial constitutional question. The judicial determination that the Respondent was not legally responsible for the accident has now become final under Ohio law. Such determination renders moot any question concerning the propriety of the rulings of the lower courts pertaining to the status of the decedent's alleged illegitimate child.

REASONS WHY THE CAUSE SHOULD NOT BE REVIEWED BY THIS COURT

This is a relatively uncomplicated automobile negligence case which was decided adversely to the Petitioner upon the simple question of fault. The determination that the Respondent was not legally responsible for the accident was based upon the statutes and common law of the State of Ohio pertaining to liability for the operation of motor vehicles, not upon any constitutional considerations.

While it is true that a question was presented in the trial court as to the right of the decedent's alleged illegitimate child to participate as a beneficiary of the action, such question concerned only the issue of damages under Ohio law. Under Ohio law an action for wrongful death must be brought in the name of the personal representative of the deceased person for the benefit of the next of kin. The jury then awards damages in proportion to the pecuniary injury suffered by the persons for whose benefit the action is brought, See: Ohio Revised Code, Section 2125.02. In this case, however, the jury decided the case on the question of liability and did not reach the damage issue.

Since it has been determined that the Respondent was not legally responsible for the death of the Petitioner's decedent, the question of whether or not said

decedent's illegitimate child could participate in the proceeds of the action becomes academic and moot.

Although it is not necessary to a determination of the issue before the Court, Respondent feels compelled nevertheless to point out that Petitioner's view of the present status of the law of Ohio as respects the rights of illegitimate children is probably incorrect. Petitioner has neglected to mention a landmark Ohio case which was decided on June 7, 1972, to wit: *Franklin vs. Julian*, 30 Ohio St. 2d 228, 283 N.E. 2d 813. The tenor of this recent decision of the Supreme Court of Ohio is to abolish all distinctions which have formerly existed as respects the rights of illegitimate children and in its decision the court has cited, among others, the decision of this court in *Levy vs. Louisiana* (1968) 391 U.S. 58, 88 S.Ct. 1509, 20 L.Ed. 2d 436, which is relied upon so heavily by the Petitioner.

Thus it is seen that the constitutional question which the Petitioner seeks to present became moot when the jury absolved the defendant of responsibility for the accident. The Supreme Court of Ohio correctly ruled, therefore, that this case does not present any substantial constitutional question. Furthermore, there is no reason to believe that the Supreme Court of Ohio would decide such question in any manner other than in accord with the applicable decisions of this Court if such question should later be directly presented to it.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,
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CERTIFICATE OF SERVICE

The undersigned attorney for the Respondent, Winston Franklin Clarke-White, hereby certifies that a copy of the foregoing Brief was served upon the Attorney for the Petitioner, James R. Burchfield, 1313 East Broad Street, Columbus, Ohio 43205, on March 9, 1973.

JAMES L. GRAHAM